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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 02554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	

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COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OF CALIFORNIA ("ALLIED")

Dated: February 29, 1996

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COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OF CALIFORNIA ("ALLIED")

Allied is the trade association which for more than thirty years has represented the interests of California's wireless utilities. Allied's comments herein are in response to this Commission's Notice of Proposed Rulemaking, FCC 95-505 (Released January 11, 1996) ("NPRM"). They focus on the NPRM insofar as it affects paging service providers.[1]

This proceeding is of particular concern to paging carriers. While characterized as co-carriers by the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), and by numerous FCC declarations, paging companies have never been provided with true co-carrier treatment by local exchange carriers ("LECs") or interexchange carriers ("IXCs"). Despite instructions

[1] Also known as providers of narrowband commercial mobile radio services ("CMRS").

to provide "mutual compensation", these landline entities have seldom if ever done so for paging carriers. Indeed, the interconnection arrangements offered to them by many LECs are less favorable than those currently extended to others, even though paging traffic is far more profitable to the LECs, and even though narrowband CMRS providers assume substantial termination functions from the LECs.

These comments offer a general overview describing the nature of paging traffic, and the need for substantial changes in current interconnect arrangements. See Section I below. They also address existing and proposed compensation arrangements between LECs and narrowband CMRS providers in California. See Section II(A) below. Allied will also discuss the relationship between negotiated and tariffed approaches (Section II(B)(1)) and state/federal jurisdictional issues (Section II(B)(2)). Finally, Allied will address one-way paging calls that are initially carried by inter-exchange carriers ("IXCs") before being delivered to narrowband CMRS providers (Section III).[2]

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[2] Allied will not address current interconnect arrangements outside of California. However, it does endorse the more general comments relating to paging services which it anticipates will be filed herein by the Personal Communications Industry Association, Pagenet, and The Westlink Company.

I.

GENERAL COMMENTS

This Commission has directed mutual compensation for LECs and CMRS providers which terminate calls on each other's networks.[3] When mobile carriers terminate such calls, they perform similar functions as LECs which terminate calls delivered to them by other LECs, or by IXCs. In doing so, mobile carriers enhance the bottom-line revenues of the originating LECs, which in nearly all cases bill the calling party at rates which assume performance by the LECs of both originating and terminating functions.

Paging traffic is unusually profitable to the LEC, since:

- Paging calls are originated by subscribers to an LEC's or IXC's service.
- Though the LECs bill and keep for the entire call, it is the paging carrier which performs the termination and transport functions for calls that are directed to paging numbers.
- Paging carriers terminate no traffic on the LEC network, so that there are no reciprocal functions assumed by the LEC to offset those performed by the paging company.
- The completion rate for paging calls is nearly 100%.
- Paging calls are of short duration, and seldom consume more than 20 - 30 seconds of conversation time.
- Paging calls stimulate further usage of the landline network, as where the paging customer responds to a message by placing a separate call.

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[3] NPRM, note 2, citing Implementation of Sections 3(n) and 332 of the Communications Act [etc.], Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994)("CMRS Second Report"). See also Declaratory Ruling, 2 FCC Rcd. at 2915.

The typical intra-LATA land-to-land call is originated <u>and</u> terminated by an LEC. For example:

<u>Figure 1</u>:

Calling Party→ Serving Wire Center ("SWC") → Tandem Office ("TDM") → SWC → Called Party

In contrast, when an intra-LATA call is directed to a paging number, the call is generally delivered to the paging carrier at either the originating SWC (this would be a "Type 1" arrangement), or at the LEC tandem (a "Type 2" arrangement). Thus:

<u>Figure 2 (Type 1)</u>:

Calling Party → SWC

↓

Paging Terminal → Transmitters → Called Pager

<u>Figure 3 (Type 2)</u>:

Calling Party → SWC → TDM

↓

Paging Terminal → Transmitters → Called Pager

Paging calls are extremely profitable for landline carriers when they are interchanged in the above manner. They are short in duration, easy to carry, and 100% revenue producing. The originating caller is typically billed full tariffed rates, with the proceeds going directly to the pockets of the landline carriers. Nothing is paid to the paging carrier which has assumed responsibility for nearly half of the functions ordinarily performed by the LEC.

II.

COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. *Existing Interconnection Arrangements Flout The Mutual Compensation Rule And Should Be Reformed.*

Allied members interconnect primarily with Pacific Bell ("Pacific") in California.[4] Pacific's interconnect offerings are currently embodied in negotiated, interim contracts, which will remain in effect until resolution of numerous protests which have been filed against Pacific's attempt to tariff its CMRS interconnect terms with the California Public Utilities Commission ("CPUC").

Pacific's wireless interconnect contracts distinguish between so-called Type 1 and Type 2 arrangements:

(1) Type 1 Interconnection: Figure 2 above illustrates a Type 1 interconnection scheme. The paging unit is identified by a direct in-dial ("DID") number which is deemed to reside in a Pacific Bell end-office. The calling party pays Pacific full tariffed rates (usually $.04 for the first minute) for calling the paging number, even though the paging carrier often takes delivery of the call at the originating serving wire center, and always terminates the call through its own switch and transmitter network. Nothing is paid to the paging carrier for its role in terminating each call.

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[4] GTE has a significant presence in the Los Angeles LATA. Its interconnect offering generally parallels that of Pacific, though certain variations are noteworthy. See below at page 8.

(2) Type 2 Interconnection (Figure 3 above)(With LP-2 Option): Here, the paging carrier pays a substantial up-front fee for programming its telephone numbers in Pacific Bell's switches. The charge per 10,000 number block (or "NXX") ranges between \$15,000 and \$38,000. Intra-LATA calls addressed to such numbers are routed to a Pacific tandem office, with the paging carrier carrying the traffic beyond the tandem to its own terminal, and terminating it on its own network. The calling party pays Pacific the tariffed rate for a local call, i.e., usually four cents, while the paging carrier pays a transport charge of 1.2 cents (more or less) to Pacific Bell where the call in question has been carried more than 12 miles from the originating serving wire center to the tandem. Nothing is paid to the paging carrier for terminating the call.

(3) Type 2 Interconnection (Without LP-2 Option): Here, the NXX is "homed" at a Pacific tandem, but the calling party pays full tariffed rates, which may include zone unit message ("ZUM") and toll charges where the call is carried more than 12 miles. Nothing is paid to the paging carrier which terminates the call from the tandem.

(4) Discussion:

The Pacific interconnect model discriminates in at least two ways. The first relates to the termination function which is assumed by the paging carrier for most Type 1, and all Type 2 paging calls. This function is technically indistinguishable from that assumed by Pacific Bell when it takes delivery, and terminate calls originated by two-way mobile carriers and IXCs. In the IXC situation, the termination charges imposed by the Pacific's approximate 1.75 cents per minute. When Pacific terminates a CMRS-originated call, the charge to the mobile carrier is about 2.48 cents per minute.

The same discrimination exists when one considers the charges imposed by Pacific for terminating calls originated by competing local carriers ("CLCs"). An example is Pacific's contractual arrangement with Metropolitan Fibre Systems ("MFS"), which is referred to at Note 71 of the NPRM. The MFS/Pacific contract provides for a reciprocal termination charge of .75 cents per minute, or .87 cents per minute, depending upon whether the relevant call is "local" or not. Unlike CMRS providers, MFS is not obligated to pay anything additional to Pacific for programming MFS numbers in its switches.[5] The configuration described by the MFS agreement are not materially different from those which link Pacific with California's paging carriers. Yet while MFS is paid for terminating Pacific's calls, the paging carriers get nothing.

A second form of discrimination relates to code administration. Co-carriers by definition must switch calls that are addressed to North American Numbering Plan ("NANP") numbers. To do so, they must program NXX codes into their own switches. While the costs of this programming are absorbed by the LECs, CLCs, and IXCs when dealing among themselves, the treatment is quite different for codes that are allocated by Pacific Bell to CMRS providers, where Pacific imposes a non-recurring programming charge of up to $38,000 per NXX.[6]

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[5] The MFS contract was approved by the CPUC on January 17, 1996 by its Resolution Number T-15824. See NPRM, Paragraph 21 re Pacific's duty to treat CMRS providers similarly.

[6] The Act of 1996 at Section 251e(2) requires that costs relating to number administration shall be borne on a "competitively neutral basis".

Issues are also raised by the routing of calls between LECs before they are delivered to the terminating wireless carrier. The Los Angeles LATA is effectively divided between Pacific Bell and GTE. Each company allocates NXXs to CMRS providers, and "homes" them in its own tandem offices. However, only GTE recognizes that such numbers in fact reside in the points of presence established by the relevant wireless carriers. The result is excessive and unnecessary transport of calls which originate on Pacific's network but are directed to a paging number which has been allocated by GTE. Despite repeated assurances over many years that it would stop the practice, Pacific continues to route all such calls to the GTE tandem where the code is deemed to reside, rather than directly to the CMRS provider to which the code is actually assigned. The result is a toll call to Pacific subscriber and a dramatic, chilling effect on calls by Pacific's subscribers to paging and cellular numbers.

This phenomenon is not the result of any iron rule of telco routing. GTE has for several years "honored" the CMRS numbers administered by Pacific. This means that calls directed by GTE subscribers to Pacific's wireless codes will be delivered directly from the GTE tandem to the wireless carrier, rather than over the roundabout path used by Pacific when its customers call wireless units identified by GTE numbers.

(5) Proposal: Clearly, "mutual compensation" under existing CMRS/LEC arrangements means unilateral compensation for the LECs, and nothing for the CMRS providers. The reason for this is a lack of leverage as between CMRS providers and their LEC co-carriers. For paging carriers, this bargaining weakness would continue, and would be made worse by a "bill and keep" regime. "Bill and keep" for narrowband CMRS providers perpetuates the

unfairly profitable arrangements which now exist. What Allied proposes is immediate reaffirmation of the following:

- The interconnection rights first defined by Section 201 of the Telecommunications Act of 1934, and expanded by the Omnibus Budget Reconciliation Act ("OBRA") and the Telecommunications Act of 1996 ("Act of 1996"), apply without reservation to the relationships between narrowband CMRS providers and other telecommunications service providers.

- Interconnection charges between service providers should be based on long-run incremental costs.[7]

- The interconnection arrangements offered by the LECs to competitive local carriers and/or others must be offered without distinction to narrowband CMRS providers, assuming substantial technical equivalency.

- "Bill and keep" is, a reasonable application of the rule favoring mutual compensation as it applies to LECs and broadband CMRS providers. It is not a reasonable solution for narrowband CMRS providers.

- Narrowband CMRS carries are entitled to compensation that is comparable to that charged by the LECs for terminating mobile-to-land traffic, CLC, and IXC originated traffic.

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[7] By order of the CPUC, the interconnect services of Pacific and GTE are priced on the basis of direct embedded costs. CPUC Decision 92-01-016 (1992).

- Flat monthly charges for dedicated transport facilities and usage-sensitive charges for switched transport services are only appropriate when it is clear that the originating LEC is not already collecting for such functions from its own customers.

- It is not appropriate for an LEC unilaterally to charge CMRS providers for programming NXX codes. See Act of 1996, Section 251e(2), which requires competitive neutrality in the allocation of telephone numbers.

- Unless the LEC has been otherwise instructed by the CMRS carrier, land-originated calls should be directed to the wireless POP which is nearest to the originating service wire center.

B. *Tariffs and Jurisdictional Issues*

(1) *Tariff vs. Contractual Arrangements*

In California, the existence of interconnection tariffs has often been used by LECs as a shield against one-on-one negotiations. In essence, the LECs argue that tariffs, once filed and approved, enjoy a presumption of reasonableness and that any deviation constitutes unlawful discrimination. CMRS carriers proposing innovative alternatives are turned away at the door.

The California PUC has been stymied by this issue. Prior to 1990, CMRS interconnect arrangements were the subject of negotiated contracts, though such contracts would from time-to-time incorporate by reference individually tariffed rate elements. CPUC Decision 90-06-025. Then, the CPUC declared that paging and conventional two-way interconnection should be the subject of formally filed tariffs. CPUC Decision 92-01-016 (1992). Pacific Bell thereupon filed a petition seeking to require that all interconnection terms and conditions be tariffed. The CPUC granted this petition (over the objection of GTE and the cellular industry) in 1994[8] only to reverse its reasoning in 1995 when it stated that interconnection between LECs and CLCs should be the subject of individually negotiated contracts.[9]

The result is utter confusion, and a clear need for this Commission to revisit the matter. It should be remembered that while a tariffed regime may seem to be more friendly to smaller entities, it has often been the case that while the LECs have supported tariffed approaches, CMRS providers have opposed them. Too many LECs consider tariffs to be a closed world which allows for no deviation. One solution would require tariffs as a "common denominator", available to all comers, but would also take to heart the Act of 1996, which encourages negotiated interconnection contracts. Act of 1996, Section 251c(1) and 251c(2)(C).

These contracts should be available for public inspection, and should include language to the effect that other entities able to meet reasonable technical pre-conditions are eligible for any contract rate agreed to by the LEC with a third party.

(2) *The Communications Act of 1996 And This Commission's Jurisdiction Over The Basic Principles of CMRS Interconnection.*

Allied will not at this point venture an opinion whether or not it is possible for federal and state interests to co-exist with regard to LEC/CMRS interconnect policy.

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[8] CPUC Decision 94-04-085 (1994).

[9] CPUC Decision 94-09-065 (1994).

However, Allied emphasizes that this Commission has unquestioned power to establish the general principles for CMRS/LEC interconnection, and that these general principles should be regarded as pre-emptive. This is the approach taken by the Act of 1996 as to interconnection generally, i.e., while the states are given a role in implementing certain basic, defined principles, they may not ignore them. For example:

◇ All telecommunication carriers must ensure technical compatibility, and inter-connectability with each other's networks. Act of 1996, Section 251a.

◇ All LECs must establish reciprocal compensation arrangements with other carriers for transporting and terminating each other's traffic. NPRM, Paragraph 14; Act of 1996, Sections 251b(5), 252d(2)(A)(i). Reciprocity includes not only termination charges, but also embraces NXX administration. Act of 1996, Section 251e(1).

◇ All LECs must negotiate interconnect arrangements in good faith, and must provide interconnection on a non-discriminatory basis to any requesting carrier. NPRM, Paragraph 14; Act of 1996, Sections 251c(1), 251c(2)(c).

◇ All LECs must unbundle network elements at the request of an interconnecting carrier. Act of 1996, Sections 251c(2)(B); 251d(3).

◇ All LECs must provide other carriers with actual co-location, or if the local PUC finds that such is not practical, must provide virtual co-location. Act of 1996,

III.

THE MUTUAL COMPENSATION RULE, THE IXCs AND PAGING SERVICE PROVIDERS

The technical and economic principles which apply to the CMRS/LEC relationship are equally valid when traffic is exchanged between IXCs and CMRS providers. When a land/land call is carried by an IXC, but terminated by an LEC, the LEC is entitled to compensation. Similarly, when a land-to-pager call is carried by an IXC, but terminated by a narrowband CMRS provider, the latter should be similarly compensated. See NPRM at Paragraphs 16, 115-117.

IV.

CONCLUSION

There is no conflict between "bill and keep" and "mutual compensation", with "bill and keep" being no more than a convenient mechanism to ensure reasonably fair mutual compensation where traffic is in two directions and/or where termination costs are nominal.

"Bill and keep" is not an acceptable mechanism where traffic flows in only one direction, and where IXCs have long collected very substantial termination fees for mobile-originated calls. In such situations, there is no argument whatsoever for the continued failure by the LECs and IXCs to abide by the mutual compensation rule. Such carriers pay each other negotiated termination charges which are far from nominal. These charges provide a suitable surrogate for use on an interim basis in the paging context.

What cannot be permitted is the continuation of the *status quo* on even an interim basis. In a paging context, "bill and keep" is a windfall to originating landline carriers, which are entirely disincented to negotiate acceptable reforms.

Respectfully Submitted,

THE ALLIED PERSONAL COMMUNICATIONS
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